



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

NOV 22 2016

Marc Elias, Wilson Graham, Aria Branch  
Perkins Coie LLP  
700 13<sup>th</sup> Street, NW, Suite 600  
Washington, DC 20005

RE: MUR 7029  
Women Vote! And Denise Feriozzi in her  
official capacity as treasurer

Dear Mr. Elias:

On March 28, 2016, the Federal Election Commission notified your client, Women Vote! and Denise Feriozzi in her official capacity as treasurer of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November, 2016, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe that Women Vote! and Denise Feriozzi in her official capacity as treasurer violated 52 U.S.C. §§ 30116(a)(2)(A) or 30118. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENTS:** Katie McGinty for Senate and Roberta Golden,  
7 in her official capacity as treasurer

**MUR 7029**

8  
9 Ed Rendell

10 EMILY's List and Ranny Cooper  
11 in her official capacity as treasurer

12 Women Vote! and Denise Feriozzi  
13 in her official capacity as treasurer

14 League of Conservation Voters, Inc.

15 League of Conservation Voters Action Fund and  
16 Patrick Collins in his official capacity as treasurer

17 League of Conservation Voters Victory Fund and  
18 Patrick Collins in his official capacity as treasurer

19 **I. INTRODUCTION**

20 Complainant alleges that Katie McGinty for Senate and Roberta Golden in her official  
21 capacity as treasurer ("McGinty Committee"), received excessive and prohibited in-kind  
22 contributions as a result of coordinated expenditures made by several outside groups.  
23 Complainant further alleges that public comments in an article in POLITICO made by Ed Rendell,  
24 the McGinty Committee's Chair, prove that these expenditures were coordinated. Several of the  
25 named groups, including EMILY's List and Ranny Cooper in her official capacity as treasurer  
26 ("EMILY's List"), League of Conservation Voters, Inc. ("LCV"), League of Conservation  
27 Voters Action Fund and Patrick Collins in his official capacity as treasurer ("LCV Action  
28 Fund"), and League of Conservation Voters Victory Fund and Patrick Collins in his official  
29 capacity as treasurer ("LCV Victory Fund") (collectively "LCV Respondents") assert that they  
30 made no expenditures in support of McGinty's campaign. One group, Women Vote! and Denise

1 Feriozzi in her official capacity as treasurer ("Women Vote!"), acknowledges making  
2 expenditures, but denies that they were coordinated.

3 The Commission finds no reason to believe that the McGinty Committee or Ed Rendell  
4 received excessive or prohibited in-kind contributions, in violation of 52 U.S.C. §§ 30116(f) or  
5 30118. The Commission also finds no reason to believe that EMILY's List, the LCV  
6 Respondents, and Women Vote! made excessive or prohibited in-kind contributions, in violation  
7 of 52 U.S.C. §§ 30116(a)(2)(A) or 30118.

## 8 II. FACTUAL AND LEGAL ANALYSIS

### 9 A. Background

10 Katie McGinty is the 2016 Democratic candidate for U.S. Senate in Pennsylvania. Katie  
11 McGinty for Senate is McGinty's authorized committee, and Roberta Golden is the committee's  
12 treasurer. Former Pennsylvania Governor Ed Rendell is Chair of the McGinty Committee.

13 EMILY's List is a federally registered, multicandidate political committee that makes  
14 direct contributions to, and solicits contributions on behalf of candidates it supports. Women  
15 Vote! is a federally registered independent-expenditure-only committee that engages in various  
16 forms of general public communication, and is affiliated with EMILY's List.

17 LCV is a non-profit organization, which is registered with the Commission as a qualified,  
18 non-party political committee. LCV Action Fund is a federally registered political action  
19 committee and LCV Victory Fund is a federally registered independent-expenditure-only  
20 committee. Patrick Collins is the treasurer of both LCV Action Fund and LCV Victory Fund.

21 On March 10, 2016, POLITICO reported,

22 Former Gov. Ed Rendell, McGinty's campaign chairman, told Campaign Pro that  
23 EMILY's List will spend far more than \$1 million on the race. Rendell, who has  
24 said McGinty and outside groups need to spend at least \$3.5 million combined in

1 the primary, said he believed EMILY's List would spend at least \$2 million on  
2 television, with some of the cash coming from the League of Conservation  
3 Voters. Both groups have endorsed McGinty, and Rendell said EMILY's List  
4 would be placed in charge of the pro-McGinty independent expenditure  
5 operation.<sup>1</sup>

6 Based solely on these purported statements, the Complaint alleges that Rendell possessed non-  
7 public information regarding the spending plans of these outside groups and asserts that the  
8 McGinty Committee must have coordinated with them on those plans.<sup>2</sup>

9 EMILY's List and the LCV Respondents deny that they made any expenditures in  
10 support of McGinty.<sup>3</sup> Although Women Vote! acknowledges making \$1,750,447 in independent  
11 expenditures, it denies the coordination allegations.<sup>4</sup> Women Vote! argues that it had already  
12 publicly discussed its plans to make independent expenditures in support of McGinty's  
13 campaign, and it attached a March 9, 2016, press release and other documents stating its  
14 commitment to support McGinty.<sup>5</sup> Additionally, Women Vote! asserts that it maintains a  
15 firewall policy that bars all employees and consultants who work on its independent expenditure

<sup>1</sup> Compl. at 1. See <http://www.politico.com/tipsheets/morning-score/2016/03/boehner-invisible-as-candidates-scrap-to-replace-him-in-ohio-clinton-sanders-debate-in-miami-outside-money-pours-into-pennsylvania-senate-213144#ixzz4HR8YM0YT>.

<sup>2</sup> Compl. at 4-5.

<sup>3</sup> EMILY's List/Women Vote! Resp. at 4-6; LCV Resp. at 1-2.

<sup>4</sup> EMILY's List/Women Vote! Resp. at 4-6.

<sup>5</sup> *Id.* at 4. See "Women Vote! Launches \$1 Million Program in Pennsylvania," (Mar. 9, 2016), <http://emilyslist.org/news/entry/women-vote-launches-1-million-program-in-pennsylvania>; J. Mathis, *EMILY's List Vows \$1M to Back McGinty*, PHILADELPHIA, Mar. 10, 2016; EMILY's List/Women Vote! Resp., Exh. B, Women Vote! Memorandum, "Winning with Katie McGinty," January 14, 2016; EMILY's List/Women Vote! Resp., Exh. C, Women Vote! Memorandum, "Taking Back the Senate with Katie McGinty," March 2016.

1 program from having any material contact with any of the federal candidates, committees, or  
2 their agents that Women Vote! supports.<sup>6</sup>

3 The McGinty Committee and Rendell deny any coordination.<sup>7</sup> Both assert that the  
4 statements attributed to Rendell in the POLITICO article were based on publicly available  
5 information, and did not contain the kind of information that could only have been obtained  
6 through direct, private communications with the committees named in the article.<sup>8</sup> The McGinty  
7 Committee also asserts that it did not request, suggest, or otherwise assent to any of the  
8 communications sponsored by Women Vote!.<sup>9</sup>

9 **B. Analysis**

10 The Act provides that no multicandidate committee may make contributions to any  
11 candidate or her authorized committee with respect to any election for Federal office, which  
12 aggregate to exceed \$5,000.<sup>10</sup> Expenditures made by any person "in cooperation, consultation,  
13 or concert with, or at the request or suggestion of" a candidate or her authorized committee or  
14 agent qualify as a contribution to the candidate and must be reported as expenditures made by the  
15

<sup>6</sup> *Id.* Women Vote! provides a copy of its firewall policy with its response, and asserts that the policy was distributed to all relevant employees, consultants, and clients. *Id.* at 4-5, Exh. A. The policy prohibits all employees who work on the Women Vote! independent expenditure program from having any material contact with any federal candidate, agents, or campaign that is supported by Women Vote! *Id.* at 5, Exh. A. The policy also restricts independent expenditure program employees' interaction with any EMILY's List staff or consultants who work with federal candidates and political party committees on Women Vote! coordinated programs. *Id.*

<sup>7</sup> McGinty Committee Resp. at 3-5 and Rendell Resp. at 2.

<sup>8</sup> *Id.*; *id.* Rendell admits in the Response that he knows EMILY's List's President, Stephanie Schriock, but states that he believes that she has no role in its independent expenditure program, and claims that he has never had material contact with the individuals involved in the EMILY's List or Women Vote! independent expenditure programs. Rendell Resp. at 1-2. He further asserts that he has separately assisted both EMILY's List and the McGinty Committee with their respective fundraising efforts, but at no time has he learned of private strategies or planning from either entity, nor has he communicated private information to either committee. *Id.* at 2.

<sup>9</sup> McGinty Committee Resp. at 5.

<sup>10</sup> 52 U.S.C. § 30116(a)(2)(A).

1 candidate's authorized committee.<sup>11</sup> Consequently, a communication that is coordinated with a  
2 candidate or her authorized committee is considered an in-kind contribution and is subject to the  
3 limits, prohibitions, and reporting requirements of the Act.<sup>12</sup> The Act prohibits corporations  
4 from making, and candidates or their committees from knowingly accepting, contributions in  
5 connection with any election to political office.<sup>13</sup>

6 A communication is coordinated with a candidate, her authorized committee, or agent of  
7 either, if it meets a three-prong test set forth in the Commission's regulations: (1) it is paid for,  
8 in whole or in part, by a person other than the candidate or authorized committee; (2) it satisfies  
9 one of five content standards in 11 C.F.R. § 109.21(c),<sup>14</sup> and (3) it satisfies one of six conduct  
10 standards in 11 C.F.R. § 109.21(d).<sup>15</sup> All three prongs must be satisfied for a communication to  
11 be considered coordinated under these regulations.<sup>16</sup>

<sup>11</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(a).

<sup>12</sup> 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

<sup>13</sup> 52 U.S.C. §§ 30118(a).

<sup>19</sup> In general, the content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication that, in relevant part, refers to a clearly identified candidate, and is publicly distributed or disseminated in a jurisdiction 90 days or fewer before the candidate's primary election or nominating caucus in that jurisdiction; or (5) a public communication that is the functional equivalent of express advocacy. *Id.* § 109.21(c)(1)-(5).

<sup>20</sup> The six types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. *Id.* § 109.21(d)(1)-(6).

<sup>16</sup> *Id.* See also Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003).

1                   **1.     Payment Prong**

2           Disclosure reports filed with the Commission support the assertions that EMILY's List  
3   and the LCV Respondents made no independent expenditures or electioneering communications  
4   during McGinty's primary election, and there is no other available information that EMILY's  
5   List or the LCV Respondents made such expenditures. Thus, the payment prong is not satisfied  
6   as to these committees. Women Vote! satisfies the payment prong because it admits it spent  
7   \$1,750,447 for communications that expressly advocated for McGinty's election.<sup>17</sup>

8                   **2.     Content Prong**

9           The content prong is satisfied if the communication in question meets at least one of the  
10   content standards.<sup>18</sup> Publicly available information indicates that Women Vote! paid for  
11   independent expenditures and electioneering communications that aired within 90 days of the  
12   Pennsylvania Democratic primary election held on April 26, 2016.<sup>19</sup> And, as mentioned above,  
13   Women Vote! reported making \$1,750,447 in independent expenditures in support of McGinty.

14                   **3.     Conduct Prong**

15           The Commission's regulations set forth six types of conduct between the payor and the  
16   candidate's committee, whether or not there is formal agreement or collaboration, which can

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<sup>17</sup>       EMILY's List/Women Vote! Resp. at 3.

<sup>18</sup>       The content standards include: (1) a communication that is an electioneering communications under 11 C.F.R. § 100.29(a); (2) a public communication that disseminates, distributes, or republishes campaign materials; (3) a public communication containing express advocacy; or (4) a public communication that, in relevant part, refers to a clearly identified federal candidate, is publicly distributed or disseminated 90 days or fewer before a primary or general election, and is directed to voters in the jurisdiction of the clearly identified candidate. 11 C.F.R. § 109.21(c).

<sup>19</sup>       See <http://www.emilyslist.org/news/entry/women-vote-launches-ad-educating-pennsylvania-voters-on-sestaks-record> (Apr. 11, 2016). The Women Vote! "Get" commercial supporting McGinty started airing April 4, 2016. See <https://www.youtube.com/watch?v=EJljh70rkQA>. The Women Vote! "Spin" commercial supporting McGinty started airing April 11, 2016. See <https://www.youtube.com/watch?v=AHqUXffPUIs&feature=youtu.be>.

1 satisfy the conduct prong.<sup>20</sup> Such conduct includes: (1) a request or suggestion; (2) material  
2 involvement; (3) substantial discussion; (4) common vendor; (5) former employee or  
3 independent contractor; and (6) dissemination, distribution, or republication of campaign  
4 material.<sup>21</sup>

5 The coordination regulations contain a safe harbor for political committees that make  
6 independent expenditures if those committees establish and implement a firewall that meets  
7 certain requirements.<sup>22</sup> The firewall must prohibit the flow of information between the  
8 employees or persons providing the services for the person paying for the communication and  
9 those employees or consultants currently or previously providing services to the affected  
10 candidate or his committee.<sup>23</sup> The firewall must be described in a written policy that is  
11 distributed to all relevant employees, consultants, and clients affected by the policy.<sup>24</sup> For  
12 committees with a firewall, the safe harbor is applicable in all circumstances unless specific  
13 information demonstrating coordination is present.<sup>25</sup>

14 The Complaint does not allege specific acts that indicate that the conduct prong of the  
15 coordination test was satisfied through direct contacts between Women Vote! and the McGinty  
16 Committee. Instead, the Complaint suggests that Rendell's statements show that he had access  
17 to private information about the Respondents' plans to make independent expenditures, which he

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<sup>20</sup> 11 C.F.R. § 109.21(d).

<sup>21</sup> *Id.*

<sup>22</sup> 11 C.F.R. § 109.21(h).

<sup>23</sup> *Id.*; see also MUR 5506 (Castor) First General Counsel's Report at 7-8 (Aug. 9, 2005).

<sup>24</sup> *Id.*

<sup>25</sup> Explanation and Justification, Coordinated Communications, 71 Fed. Reg. 33,190, 33,206-07 (2006).



1 could only have gained through coordination with those committees.<sup>26</sup> In their Responses, the  
2 McGinty Committee, Rendell, and Women Vote! all deny engaging in actions that would meet  
3 the conduct standards for coordination.<sup>27</sup> Moreover, Women Vote! contends that it maintains a  
4 firewall to prevent communications between federal candidates and the team responsible for  
5 making independent expenditures.<sup>28</sup>

6 The available information does not support a reasonable inference that Women Vote! met  
7 any of the conduct standards for coordination. Women Vote! issued public statements indicating  
8 its intent to make independent expenditures to support McGinty before Rendell made the  
9 statement cited in the POLITICO article.

10 Additionally, Women Vote!'s firewall appears to meet the requirements of the safe  
11 harbor, and there is no publicly available information, including that cited in the Complaint, to  
12 suggest that Women Vote! did not follow its firewall policy. Therefore, Women Vote!'s  
13 payment for and production of independent expenditures supporting McGinty's candidacy does  
14 not satisfy the conduct prong of the coordination test.

15 Because there is no basis to conclude that any of the Respondents made or received  
16 excessive or prohibited in-kind contributions as a result of coordinated expenditures, the  
17 Commission finds no reason to believe that Katie McGinty for Senate and Roberta Golden in her  
18 official capacity as treasurer, Ed Rendell, EMILY's List and Ranny Cooper in her official  
19 capacity as treasurer, Women Vote! and Denise Feriozzi in her official capacity as treasurer,  
20 League of Conservation Voters, Inc., League of Conservation Voters Action Fund and Patrick

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<sup>26</sup> Compl. at 4-5.

<sup>27</sup> McGinty Committee Resp. at 5; Rendell Resp. at 1-2; Emily's List/Women Vote! Resp. at 4-5.

<sup>28</sup> Emily's List/Women Vote! Resp. at 4.

- 1 Collins in his official capacity as treasurer, and League of Conservation Voters Victory Fund and
- 2 Patrick Collins in his official capacity as treasurer, violated 52 U.S.C. §§ 30116(a)(2)(A), (f) or
- 3 30118.

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